

PETER I. WOLD, II  
WESTERN STANDARD CORPORATION

IBLA 73-218

Decided September 17, 1973

Appeal from decision of Wyoming State Office, Bureau of Land Management, rejecting applications for preference right coal leases.

Set aside in part and remanded.

Coal Leases and Permits: Generally! ! Coal Leases and Permits:  
Leases! ! Coal Leases and Permits: Permits! ! Mineral Leasing Act:  
Generally

The holder of a coal prospecting permit is entitled to a lease pursuant to section 2 of the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 201(b) (1970), if he shows to the satisfaction of the Secretary of the Interior that the land contains coal in commercial quantities discovered prior to the expiration of his permit.

Administrative Procedure: Hearings! ! Coal Leases and Permits:  
Generally! ! Coal Leases and Permits: Leases! ! Coal Leases and  
Permits: Permits! ! Rules of Practice: Hearings

A coal prospecting permittee who applies for a coal lease, alleging  
with supportive data that there is coal in commercial quantities within  
certain lands in his permit, is entitled to a hearing conducted in  
accordance with the Administrative Procedure Act, 5 U.S.C. § 554  
(1970), before his application may be rejected because he has not  
shown coal in commercial quantities.

APPEARANCES: Robert L. Raforth, Manager, Mineral Operations, Western Standard Corporation;  
Peter I. Wold, II, pro se.

OPINION BY MRS. THOMPSON

This appeal by Peter I. Wold, II, and Western Standard Corporation, as assignee of Wold's  
rights under coal prospecting permits and coal preference right lease applications, is from a decision  
dated December 8, 1972, of the Wyoming State Office, Bureau of Land Management. The decision  
rejected in their entirety applications

for preference right leases pursuant to coal prospecting permits W-10255, W-10256, and W-10257, embracing 2,080 acres for the three applications. The appeal pertains only to 480 acres within W-10255 and W-10256. 1/

The prospecting permits originally issued June 1, 1968, for two years and were subsequently extended for another two years. The lease applications were filed May 30, 1972, pursuant to section 2 of the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 201(b) (1970), which provides that if the "permittee shows to the Secretary that the land contains coal in commercial quantities, the permittee shall be entitled to a lease \* \* \* for all or part of the land in his permit." [Emphasis added.]

The State Office based its rejection of the applications upon a report to it from the Geological Survey concluding that drill hole records and information submitted by the permittee to Survey had failed to disclose there was coal in commercial quantities discovered on the lands during the terms of the permits. Specifically, as to the two permits in question, Survey reported:

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1/ These lands are all within T. 42 N., R. 69 W., 6th P.M., Campbell County, Wyoming.

W-10255

Sec. 20: N 1/2 NW 1/4

Sec. 22: E 1/2 SW 1/4

Sec. 27: NE 1/4, NE 1/4 NW 1/4

W-10256

Sec. 27: W 1/2 SE 1/4,

NE 1/4 SE 1/4

As appellants have "accepted" the rejection as to the lands within W-10257, and the remainder of the lands within W-10255 and W-10256, the decision appealed from is final as to the rejection of those lands.

## W-10255

Applicant drilled 26 holes on the land under application and found coal of commercial thickness in only four of these holes. The four holes were widely scattered and other holes in their immediate vicinity show the coal seam completely burned.

## W-10256

Applicant drilled 19 holes on the land under application and found coal of commercial thickness in only three of these holes. The holes encountering coal were at widely scattered locations with many intermittent barren holes.

Appellants contend that there is coal in commercial quantities within the 480 acres involved in this appeal. They calculate maximum potential reserves totaling 18.5 million tons within that acreage. They have submitted maps, cross section diagrams, and drill logs, with some explanations, to support their contention that they have made an adequate showing as to the lands involved in the appeal.

If, in fact, a permittee shows that the land contains coal in commercial quantities discovered prior to the expiration of the permit, the permittee would be entitled under the law to a lease. See Emil Usibelli, 60 I.D. 515 (1951). The law places the burden of showing sufficient data and information for ascertainment of the facts upon the permittee. Cf. Wolf Joint Venture, 75 I.D. 137 (1968). In Wolf a hearing was ordered at which the applicants, as well as the Government, could present evidence on questions of fact. While Wolf and a companion case, Kaiser Aluminum and Chemical

Corporation, A-30982 (May 3, 1968), involved applications for leases pursuant to sodium prospecting permits, the issues involved are comparable to those involved here. 2/

Appellants have shown the existence of some coal, but whether there exists coal in commercial quantities, as alleged, cannot be determined properly from the record before us. Before the applications are finally rejected as to the lands involved in this appeal on a finding that the factual condition prerequisite to the statutory entitlement to a lease has not been met, the applicants are entitled to a hearing before an administrative law judge in accordance with the provisions of the Administrative Procedure Act, 5 U.S.C. § 554 (1970). Wolf Joint Venture, supra; Kaiser Aluminum and Chemical Corporation, supra; cf. Don E. Jonz, 5 IBLA 204 (1972); United States v. O'Leary, 63 I.D. 341 (1959); Claude E. Crumb, 62 I.D. 99 (1955). 3/

This case shall be remanded to the State Office for referral to Survey to consider all the information pertaining to the 480

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2/ The hearing ordered in Wolf never took place because of a subsequent satisfactory showing by the applicants and an agreement between them and Government officials obviating the necessity for the fact! finding procedure. See Wolf Joint Venture, A-30978 (Supp.) (June 30, 1971).

3/ We note that the Secretary of the Interior's Order No. 2952, dated February 13, 1973, directed that coal prospecting permit applications be rejected until further notice. It expressly stated, however, that no rights of holders of prospecting permits issued prior to the Order would be restricted by the directive. Therefore, it in no way affects the conclusion reached in this decision.

acres in question. If Survey determines that the reduced area does not contain commercial quantities of coal, due notice to the applicants, through the State Office, BLM, shall be given advising them of the basis for the determination and that they may request a hearing before an administrative law judge on their entitlement to a lease. If the applicants then request a hearing, the case shall be transmitted to the Hearings Division for assignment to a judge, in accordance with this instruction. At such a hearing, the applicants shall have the burden of going forward with evidence to establish that they discovered coal in commercial quantities prior to the expiration of their permit, and the ultimate risk of non! persuasion on that question. Wolf Joint Venture, supra.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is set aside in part as to the lands involved in this appeal and remanded to the Wyoming State Office, BLM, for further appropriate action consistent with this decision.

Joan B. Thompson  
Member

We concur:

Edward W. Stuebing  
Member

Joseph W. Goss  
Member

